UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GOLD COUNTRY DEVELOPMENT, LLC, a New York State limited liability company, et al.

Plaintiffs,

v.

COUNTY OF EL DORADO, a public entity, et al.,

Defendants.

No. 2:20-cv-01712-MCE-CKD

MEMORANDUM AND ORDER

By way of this action, Plaintiffs Gold Country Development, LLC, Evelyn A. Gex, , and Christopher J. Marconi (collectively, "Plaintiffs" unless otherwise specified) seek redress for damages and injuries they claim to have sustained as a result of a raid upon their hemp-growing operation in 2019. Defendants include the County of El Dorado ("County"), the El Dorado County Sheriff's Department ("Sheriff's Department"), El Dorado County Sherriff John D'Agostini ("D'Agostini") and El Dorado County Sherriff's Deputy Daryl J. Miller ("Miller") ("Defendants").

Plaintiffs allege in their Complaint that, in effectuating the subject raid, Defendants deprived them of their Constitutional rights in violation of both 42 U.S.C. § 1983 and California's Bane Civil Rights Act, Cal. Civ. Code § 52.1 ("Bane Act"). Plaintiffs further allege various common law state claims, including conversion, trespass to chattels,

negligence, intentional infliction of emotional distress, and declaratory relief. Now before this Court is a Motion to Dismiss brought, on behalf of all Defendants except Miller, [1] pursuant to Federal Rule of Civil Procedure 12(b)(6).[2] ECF No. 6. Plaintiffs timely opposed Defendants' Motion to Dismiss. ECF No. 14. Defendants then timely replied to Plaintiffs' Opposition. ECF No. 15. For all the following reasons, Defendants' Motion to Dismiss (ECF No. 6) is GRANTED.

BACKGROUND[3]

Both federal law and California law permit the research and commercialization of hemp, notwithstanding prohibitions on marijuana. Hemp and marijuana are variants of the *Cannabis Sativa L* plant, but hemp by definition contains no more than 0.3% tetrahydrocannabinol ("THC"). Cal. Health & Safety Code § 11018.5. Furthermore, hemp is expressly excluded from the Controlled Substances Act, which states that "the term 'marijuana' does not include. . .hemp. . ." 21 U.S.C. § 802. Notably, there is no way to distinguish between hemp and marijuana based on plain view or odor alone.

According to Plaintiffs, with the passage of Proposition 64 in November 2016, California law encourages research in hemp cultivation and production by permitting so-called Established Agricultural Research Institutions ("EARIs") to grow hemp. EARIs are expressly permitted to cultivate and produce hemp plants with a THC content greater than 0.3% if such cultivation "contributes to the development of types of industrial hemp that will comply with the 0.3 percent THC limit." Cal. Health & Safety Code

[1] The docket in this matter does not reflect that Miller has been either served with process or made any appearance as a party, and inquiry by the Court has confirmed that this is indeed the case. Consequently, no motion has been made on Miller's behalf. Plaintiffs are hereby ordered to show cause as to why Defendant Miller should not be dismissed for failure to serve, in accordance with Rule 4(m), within ten (10) days of the date this Memorandum and Order is electronically filed.

[2] All further references to "Rule" or "Rules" are to the Federal Rules of Civil Procedure unless otherwise noted.

[3] Unless indicated otherwise, the following recitation of facts is taken, at times verbatim, from Plaintiffs' Complaint, ECF No. 1.

§ 81006(e)(10). Unlike other industrial hemp growers, EARIs are not required to obtain a laboratory test report of THC levels of a random sampling within 30 days before harvest. Cal. Health & Safety Code § 81006(e).

In response to the demand for a variety of hemp-based products, including oils, sprays, and other medicinal agents, Plaintiff Gex, established Gold Country Development, LLC (the "LLC"). The LLC purchased 237 acres of land to research and grow hemp at 4050 Lakeview Drive in El Dorado County. Although Gex was ostensibly the sole owner of the LLC, her "companion, fellow researcher and business associate", Plaintiff Marconi, participated in the operation and Plaintiffs allege that together they operated and maintained the LLC as an EARI even though it had not yet been formally registered as such with the El Dorado County Agricultural Commissioner.

In May 2019, Plaintiffs purchased 5,500 certified hemp seeds under the LLC as an EARI. At that time, Plaintiffs claim they were set to register as a commercial grower with the California Department of Food and Agriculture ("CDFA"), were prepared to plant the hemp seedlings, and intended to use the future profits to recoup their extensive start-up costs.

On or about July 12, 2019, a search warrant was issued for the Lakeview Drive property by a magistrate judge of the El Dorado County Superior Court. The search warrant ordered "the destruction of any remaining marijuana in excess of 10 pounds . . . after samples, as required by Health and Safety section 11479. . ." (emphasis added). On or about July 17, 2019, over the course of nine hours, the search warrant was executed at the Lakeview Drive property by about 25 deputies and agents, including Miller, after Plaintiffs Gex and Marconi were ordered out of the residence at gunpoint and handcuffed. The various items were seized, including 5,500 hemp seedlings, 450 Pa Khang hemp seedlings, and 12 medicinal marijuana plants, along with funds, computers, and documents belonging to Plaintiffs.

As the property was being searched, Plaintiffs and other onsite witnesses informed the deputies that the 5,500 seedlings were hemp and that the only marijuana

being grown on the premises was for Plaintiffs' personal medicinal use. Moreover, the Lakeview Drive property contained other evidence of hemp cultivation, including literature, cannabidiol ("CBD") products, growing charts and plans, and business documents. While interrogating Gex and Marconi, the deputies, and Miller in particular, made statements indicating they believed Plaintiffs were operating in connection with a marijuana ring out of New York. Ultimately, the deputies destroyed the hemp seedlings and medicinal marijuana prior to any THC laboratory testing.

Plaintiffs further allege that Defendant County failed to train the individual Defendants, maintained an official policy and/or custom of deliberate indifference of constitutional rights by officers, and ratified actions taken by the individual Defendants' actions that violated Plaintiffs' rights. As support for these allegations, Plaintiffs point to a single Board Supervisor meeting on June 23, 2020, where D'Agostini made erroneous statements about hemp and the hemp testing process, including his belief that hemp growers exceed the THC limitation and cash crop growers are experiencing 5%, 7%, and 10% THC levels well beyond those associated with hemp. Generally, Plaintiffs aver that D'Agostini misunderstood the difference between cannabis plants being cultivated for hemp as opposed to marijuana, since he believed that there was no valid distinction between the two crops.

STANDARD

On a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure ("FRCP") 12(b)(6), all allegations of material fact must be accepted as true and construed in the light most favorable to the nonmoving party. Cahill v. Liberty Mut. Ins. Co., 80 F.3d 336, 337-38 (9th Cir. 1996). Rule 8(a)(2) "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson,

355 U.S. 41, 47 (1957)). A complaint attacked by a Rule 12(b)(6) motion to dismiss does not require detailed factual allegations. However, "a plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Id. (internal citations and quotation marks omitted). A court is not required to accept as true a "legal conclusion couched as a factual allegation." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Twombly, 550 U.S. at 555). "Factual allegations must be enough to raise a right to relief above the speculative level." Twombly, 550 U.S. at 555 (citing 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004) (stating that the pleading must contain something more than "a statement of facts that merely creates a suspicion [of] a legally cognizable right of action")).

Furthermore, "Rule 8(a)(2) . . . requires a showing, rather than a blanket assertion, of entitlement to relief." Twombly, 550 U.S. at 555 n.3 (internal citations and quotation marks omitted). Thus, "[w]ithout some factual allegation in the complaint, it is hard to see how a claimant could satisfy the requirements of providing not only 'fair notice' of the nature of the claim, but also 'grounds' on which the claim rests." Id. (citing Wright & Miller, supra, at 94, 95). A pleading must contain "only enough facts to state a claim to relief that is plausible on its face." Id. at 570. If the "plaintiffs . . . have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed." Id. However, "[a] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and 'that a recovery is very remote and unlikely.'" Id. at 556 (quoting Scheuer v. Rhodes, 416 U.S. 232, 236 (1974)).

A court granting a motion to dismiss a complaint must then decide whether to grant leave to amend. Leave to amend should be "freely given" where there is no "undue delay, bad faith or dilatory motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of allowance of the amendment, [or] futility of the amendment . . . ." Foman v. Davis, 371 U.S. 178, 182 (1962); Eminence Capital, LLC v.

Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (listing the Foman factors as those to be considered when deciding whether to grant leave to amend). Not all of these factors merit equal weight. Rather, "the consideration of prejudice to the opposing party . . . carries the greatest weight." Id. (citing DCD Programs, Ltd. v. Leighton, 833 F.2d 183, 185 (9th Cir. 1987)). Dismissal without leave to amend is proper only if it is clear that "the complaint could not be saved by any amendment." Intri-Plex Techs. v. Crest Group, Inc., 499 F.3d 1048, 1056 (9th Cir. 2007) (citing In re Daou Sys., Inc., 411 F.3d 1006, 1013 (9th Cir. 2005); Ascon Props., Inc. v. Mobil Oil Co., 866 F.2d 1149, 1160 (9th Cir. 1989) ("Leave need not be granted where the amendment of the complaint . . . constitutes an exercise in futility . . . .")).

ANALYSIS

A. Plaintiffs' § 1983 Claims

Brought solely under § 1983, Plaintiffs assert their first, second, and third causes of action against Defendants for unreasonable search and seizure/destruction, violations of their due process rights, and the taking of their private property without just compensation, respectively. ECF No. 1, ¶¶ 59-78.

Section 1983 provides relief against "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . causes . . . any citizen of the United States . . . the deprivation of any rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983. Section 1983 gives parties "a method for vindicating federal rights elsewhere conferred." Graham v. Connor, 490 U.S. 386, 394 (1989) (quoting Baker v. McCollan, 443 U.S. 137, 144 n. 3 (1979)). Parties can seek relief under § 1983 against persons acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988). "Persons" covers "state and local officials sued in their individual capacities, private individuals and entities which acted under color of state law, and local governmental entities." Vance v. Cty. of Santa Clara, 928 F. Supp. 993, 995–

96 (N.D. Cal. 1996).

Plaintiff must allege "personal participation" in the alleged constitutional violation on the part of the individual to subject that person to individual liability; this is a "personal-capacity" suit under § 1983. Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002). "Persons" includes municipalities and their agents only in the narrow instances when the municipality itself causes the Constitutional violation through a policy or custom; this is an "[o]fficial-capacity suit" under § 1983. Monell v. New York Dep't of Social Services, 436 U.S. 658, 690 n. 55 (1978). In a personal-capacity § 1983 claim, a government official personally causes a deprivation of a federal right and is personally liable. In an official-capacity claim, the governmental entity or its agents act as the "moving force" behind the deprivation, and the entity remains liable for the actions of its agents. Kentucky v. Graham, 473 U.S. 159, 165–67 (1985).

Understanding the difference between 1) an official-capacity Monell theory of liability against a municipality and 2) a personal-capacity theory of liability against the individual law enforcement officers involved in the alleged violation is critical to resolving the constitutional issues presented by this case.

The only defendant who personally participated in executing the search warrant against Plaintiffs was Deputy Miller, and he is not a party to this Motion. The remaining Defendants (the County of El Dorado, the El Dorado County Sheriff's Department and Sheriff D'Agostini) are named only in their official capacities under Monell. Any such Monell liability depends upon a showing that those entities and D'Agostini were deliberately indifferent to a pattern or practice of civil rights violations committed by their deputies, including Miller. See Merritt v. County of Los Aneles, 875 F.2d 765, 770 (9th Cir. 1989). We must accordingly next determine whether any such showing has been made.

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1. Plaintiffs' § 1983 Claims Against Defendants Sheriff's Department and D'Agostini

Plaintiffs' Complaint names, in addition to the County of El Dorado itself, the El Dorado County Sheriff's Department, as an additional defendant along with D'Agostini in his official capacity as El Dorado County Sheriff. The Supreme Court has held that an "official-capacity suit is, in all respects other than name, to be treated as a suit against the entity." Kentucky v. Graham, 473 U.S. 159, 166 (1985). Such a suit "is not a suit against the official personally, for the real party in interest is the entity." Id. (emphasis in original). Where an action names municipal officials in their official capacity and the municipal entity itself is also being sued, "then the claims against the individuals are duplicative and should be dismissed." Williams v. Dirkse, No. 1:21-cv-00047-BAM (PC) 2021 WL 2227636, at *8 (June 2, 2021) (quoting Vance v. Cty. of Santa Clara, 928 F. Supp. at 993 (N.D. Cal. 1996). Moreover, where a subdivision of a county is named, such as a sheriff's department, the appropriate defendant is the county. Spears v. El Dorado Cty. Sheriff's Dep't, 2019 WL 1043105, at *3 (E.D. Cal. Mar. 5, 2019) (quoting Vance v. Cty. of Santa Clara, 928 F. Supp. at 996) ("The County is a proper defendant in a § 1983 claim, an agency of the County is not."). See also, Brown v. Cty. of Kern, 2008 WL 544565, at *3 (E.D. Cal. Feb. 26, 2008) ("A suit against . . . Kern County Sheriff Deputies, in their official capacities is the same as a suit against the payor of any damages that may be awarded, therefore the proper defendant is Kern County."); Brewster v. Shasta Cty., 275 F.3d 803, 805 (9th Cir. 2001) (finding that the sheriff acts on behalf of the county when administering county policies).[4]

Given the above caselaw, Plaintiffs cannot maintain an official capacity suit against either the Sheriff's Department or D'Agostini because they are inseparable from the County itself. Accordingly, the Complaint against Defendants Sheriff's Department

[4] It should be noted that, although the California Supreme Court in Venegas v. Cty. of Los Angeles, 32 Cal. 4th 820, 839 (2004), held that sheriffs are actors of the state – not the county – when enforcing state laws, that ruling is not binding on this Court for purposes of § 1983 liability. Therefore, because the Ninth Circuit has not adopted the holding in Venegas, the Court declines to follow Venegas's reasoning.

and D'Agostini in his official capacity, is DISMISSED, with leave to amend. This leads us to consider whether Plaintiffs' suit is proper against the only other moving defendant, El Dorado County.

2. Plaintiffs' § 1983 Claims Against Defendant County

Municipalities cannot be vicariously liable for the conduct of their employees under § 1983, but rather are only "responsible for their own illegal acts." Connick v. Thompson, 563 U.S. 51, 60 (2011) (citing Monell, 436 U.S. at 665-83). In other words, a municipality may only be liable where it individually caused a constitutional violation via "execution of government's policy or custom, whether by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy." Monell, 436 U.S. at 694.

The Supreme Court made clear that plaintiffs may not merely allege that a municipal employee wronged them to achieve success on a Monell claim. "Where a plaintiff claims that the municipality has not directly inflicted an injury, but nonetheless has caused an employee to do so, rigorous standards of culpability and causation must be applied to ensure that the municipality is not held liable solely for the actions of its employee." Bd. of Cty. Comm'rs of Bryan Cty., Okl. v. Brown, 520 U.S. 397, 405 (1997) (emphasis added). Similar demands apply to allegations of inadequate training. See City of Canton, Ohio v. Harris, 489 U.S. 378, 389-91 (1989). Following Twombly and Iqbal, the Ninth Circuit held that plaintiffs alleging Monell claims must provide allegations that are not mere recitations of the elements of such a claim, and such facts must plausibly suggest entitlement to relief. AE ex rel. Hernandez v. Cty. of Tulare, 666 F.3d 631, 637 (9th Cir. 2012); see, e.g., Dougherty v. City of Covina, 654 F.3d 892, 900-01 (9th Cir. 2011).

Plaintiffs' Complaint nonetheless offer only conclusory allegations that Defendants engaged in policies, procedures, and customs that would support Monell liability. See generally, ECF No. 1. Plaintiffs' Opposition to this Motion fares no better by merely pointing to the single instance involving Plaintiffs along with alleged statements made by

D'Agostini at an El Dorado County Commission meeting nearly a year later. Plaintiffs have failed to identify plausible deficiencies in Defendants' policies, procedures, and customs constituting deliberate indifference to others' property. The Complaint alleges neither a complete absence of officer training for cannabis-related search warrants, nor describes the inadequacy of any training that did occur. Additionally there are no factual averments identifying any prior hemp-related search and seizure violations of a constitutional magnitude that would have notified Defendants of the need for specific training on marijuana/hemp issues. Given those shortcomings, Plaintiffs have not met the pleading requirements necessary to state a viable claim under Monell. See AE ex rel. Hernandez, 666 F.3d at 637.

Plaintiffs have, thus, failed to sufficiently plead their Monell claims against the moving Defendants. ECF No. 1, ¶¶ 10, 59-78. Accordingly, Defendants' Motion to Dismiss the first, second, and third causes of action is GRANTED with leave to amend.

3. Plaintiffs' State Law Claims

Plaintiffs assert the fourth through twelfth causes of action on state law grounds. However, this action was brought under federal question jurisdiction. Because Plaintiffs failed to sufficiently plead a constitutional basis for their federal claims at this time, the Court declines to exercise supplemental jurisdiction over the remaining state law claims at this time pursuant to 28 U.S.C. § 1367. Therefore, the Court need not adjudicate the merits of Plaintiffs' state law claims and declines to do so.

4. Plaintiffs' Declaratory Relief Claim[5]

In the Motion to Dismiss briefing, the parties both agree that Plaintiffs' thirteenth cause of action will be resolved through the litigation of the other asserted claims. See ECF No. 14, 19:16-21; ECF No. 15, 1:19-21. Therefore, this cause of action is cumulative to this dispute. Accordingly, Defendants' Motion to Dismiss the thirteenth cause of action is GRANTED.

[5] The Complaint erroneously stated the claim for declaratory relief as the "fourteenth" cause of action when it is in fact the thirteenth cause of action.

CONCLUSION

For all the foregoing reasons, Defendants' Motion to Dismiss (ECF No. 6) is GRANTED. Plaintiffs' Complaint, as directed against Defendants El Dorado County, the El Dorado County Sheriff's Department, and Sheriff D'Agostini is accordingly DISMISSED with leave to amend as to the first, second, and third causes of action. Because Plaintiffs' federal law claims fail, the Court lacks jurisdiction over Plaintiffs' pendant state law claims, and it declines to adjudicate the merits of those claims in the absence of any cognizable federal claims. Finally, pursuant to the agreement of the parties, Defendants' Motion to Dismiss the thirteenth cause of action is GRANTED.

Should Plaintiffs wish to do so, they may file an amended complaint not later than twenty (20) days after the date this Memorandum and Order is electronically filed. Failure to amend within those time parameters will result in a dismissal of Defendants El Dorado County, the El Dorado County Sheriff's Department, and Sheriff D'Agostini, with prejudice and without further notice to the parties.

IT IS SO ORDERED.

Dated: September 27, 2021

MORRISON C. ENGLAND, JR
SENIOR UNITED STATES DISTRICT JUDGE